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No. 80-5799

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

ORIGINAL COPY

THOMAS RAY JAMES, Petitioner

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent

ON PETITION FOR A WRIT OF CERTIORARI

TO THE APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PETITIONER'S REPLY MEMORANDUM

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In its opposing brief, the State of Illinois misapprehends petitioner's argument concerning whether Miranda v. Arizona imposes a per se rule against renewed questioning of a suspect who has requested counsel. Petitioner does not contend that a request for counsel, once made, can never be withdrawn. However, petitioner contends that Miranda imposes a per se bar against reinstigation of the interrogation process in the hope that the accused will not renew his request for counsel. The question involved in this case is not whether the accused should be permitted to reinitiate contact with the police, as in the hypothetical example cited on page 6 of the Brief in Opposition. To the contrary, the issue here is whether the police, without any indication that the accused has changed his mind and might want to withdraw his earlier request, may renew questioning after refusing to permit the accused to see an attorney.

A per se rule against renewed interrogation after a request for counsel does not "imprison a suspect in his privileges" (Brief in Opposition, p. 5), because the accused is always free to contact police and state that he has changed his mind. However, the per se rule prohibits the police from reinstigating interrogation after an unhonored request for counsel.

At several points in its brief, the State asserts that Miranda is not violated where police readvise a suspect of his Miranda rights although they are aware that the suspect's recent request for counsel has not been honored. (See Brief in Opposition, pp. 9, 11) The State thus argues that after a request for counsel is made, the police may immediately readvise the accused of his Miranda rights, even though no attempt has been made to supply an attorney and although there is no plausible explanation for reiterating the warnings except the hope that a statement can be obtained. In order to arrive at this conclusion, the State attempts to limit the term "interrogation", as used in Miranda, to questions which actually elicit an incriminating response. (Brief in Opposition, p. 9)

Although Miranda uses the term "interrogation," that term was not intended to be interpreted as narrowly as urged by the State. Readvising an accused of his Miranda rights, only minutes after he has requested an attorney, is obviously the first step in renewing the interrogation process. The State's interpretation would permit the police to ignore repeated requests for counsel and continue to give Miranda warnings until the defendant agrees to talk.

As this Court made clear in Miranda and Michigan v. Mosley, the police must scrupulously honor an attempt by the accused to exercise his right to counsel. The police may

not seek to "wear down" the defendant by continued interrogation after counsel is requested. See Miranda, 384 U.S. at 476.

The State contends that the police must be permitted to readmonish an accused of his Miranda rights after a request for counsel because "[P]olice stations do not have to provide a 'station house lawyer' to advise a suspect." (Brief in Opposition, p. 11) Miranda mandates that police may decide not to provide an attorney only if they refrain from any attempt to obtain a statement. 384 U.S. at 474. Miranda cannot be interpreted to justify repeated questioning where there is no indication by the accused that he wished to withdraw his request.

In this case, the only reasonable interpretation of Investigater Hartshorn's decision to readvise petitioner of his Miranda rights is that Hartshorn hoped that Mr. James would be too intimidated to demand that his request for counsel be honored. The State suggests no other explanation of Hartshorn's actions, and the record permits no other explanation. Because Investigator Hartshorn renewed interrogation of petitioner in a deliberate attempt to obtain a statement without honoring the prior request for counsel, this Court should grant certiorari.

Respectfully submitted,

January 30, 1981

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